HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)
(Chapter VIII Rule 32 (2)(b)

Description of the Case.

Writ Petition No. 706 of 2004 (S/S)

Sant Ram Dobwal … Petitioner

Versus

Project Director & others … Respondents

Approved for reporting. (Yes)

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~~No approved for reporting~~

Date of Decision: 17th June, 2005.

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Writ Petition No. 706 of 2004(S/S)

Sant Ram Dobwal S/o Sri Ramadutt Dobwal
R/o Village Jaspur Patti Udhya Kot
P.O. Jakh Chaura
District Tehri Garhwal … Petitioner

Versus

1. Project Director, National A.I.D.S. Control Organisation
Ministry of Health & Family Welfare
Government of India
9th Floor
Chandralok Building
36 Janpath
New Delhi
2. Joint Director/Project Director
State A.I.D.S. Control Organisation
Health and Family Welfare
Dehradun, Uttaranchal
3. Chief Medical Superintendent
Suman District Hospital
Narendra Nagar
District Tehri Garhwal … Respondents

Sri Rakesh Thapliyal holding brief of Sri Lalit Sharma, learned counsel for the petitioner
Sri Paresh Tripathi, learned Standing counsel for the respondents
Ms. Anjali Bhargava, learned standing counsel (Central)

Hon'ble B.C. Kandpal, J.

By way of this writ petition, the petitioner has prayed a direction in the nature of certiorari quashing the impugned advertisement dated 26.05.2004 (annexure No. 4 to the petition) issued by the Chief Medical Officer, Tehri Garhwal as well as circular dated 12.01.2004 (annexure No. 8 to the writ petition) issued by respondent No. 1 i.e. Project Director National A.I.D.S. Control Organization, Ministry of Health and Family Welfare, New Delhi and also office letter dated 15.04.2004 (annexure No. 7 to the petition) issue by Additional Project Director.

The petitioner has also sought for issue a writ, order of direction in the nature of mandamus directing to the respondents to permit the

petitioner to continue as a Male Consultant and be paid the prescribed salary.

Brief facts giving rise to this petition are that the petitioner was given a job of Male Consultant on a consolidated salary of Rs. 5000/- vide order dated 03.12.2002. The petitioner continued on service from 08.12.2002 upto 31.03.2003 and thereafter the said period was extended and he continued on 05.04.2003 to 31.03.2004.

The petition further reveals that on 26.05.2004 and advertisement was published by respondent No. 3 i.e. Chief Medical Superintendent, Tehri Garhwal whereby the applications were invited for the same post and in the said advertisement the minimum qualification was sought for the post of Male Consultant is Post Graduate Degree in psychology or Psychiatrist or Social Work or Human Development. It was also made clear in the advertisement that the preference shall be given to those candidates having the experience.

As the petitioner is not having the qualification which is prescribed in the impugned advertisement and the enhanced qualification was asked for without any justification hence this writ petition.

Heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner has argued that once the petitioner has been engaged on contractual basis hence as per the settled law no contractual or ad-hoc employee can be replaced by another contractual or other employee. It has been submitted that the petitioner is being replaced by another contractual employee on the ground of enhanced qualification which is wholly unjustified and violated of Article 14 of the Constitution of India.

On the other hand learned counsel for the respondents has argued that the petitioner has no right to continue in the post as the appointment was purely on the contractual basis.

The counter and rejoinder affidavits have been exchanged.

It is not disputed that the petitioner was appointed on the contractual basis for a specified period. It is also settled law that once the

appointment was made on a contractual basis for a limited period, therefore, by the expiry of the said period, the right to remain in post comes to an end.

The Hon'ble Supreme Court in a care reported in ***(1992) 4 SCC page 33 Director, Institute of management Development Vs. Pushpa Srivastava*** has observed that:-

> *"However, without elaborating the arguments on the scope of the rules it was urged on behalf of the appellant that the order dated September 1, 1990 was specific in its terms limiting the period of appointment for six months from the date of joining. This was purely on a contractual basis. The consolidated pay was Rs. 2,400. Therefore, the respondent had no right to continue whatsoever in the post beyond the period of six months irrespective of the fact as to who had the right to abolish the post."*

Learned counsel for the petitioner has cited before me (1998) 9 Supreme Court Cases 223 B.L. Gupta & another Vs. M.C.D.

I perused the entire judgment cited by learned counsel for the petitioner and I am of the view that this judgment does not apply in any manner in the instant case.

Learned counsel for the petitioner has also cited another decision reported in ***(2000) 3 UPLBEC 2121 Rakesh Kumar Panwar & others Vs. The State of U.P. & others*** and has submitted on the basis of this that the petitioner cannot be replaced by any other appointee.

I have gone through the judgment cited before me and I am of the view that the controversy in the judgment cited before me was entirely different and has no relevance with the dispute arising in this petition.

Learned counsel for the petitioner has also argued before me that the judgment of the ***Hon'ble Supreme Court reported in (1992) 4 SCC 33*** is distinguishable because the petitioner is not seeking regularization, as his main contention is that he may not be replaced by another contractual appointee.

I do not find any force in this argument. The law which has been propounded by the Hon'ble Supreme Court in the decision cited above (Supra) is quite clear and in view of this decision the position is also quite clear that once the appointment of the petitioner was purely on contractual basis and for a limited period, therefore, after the expiry of that period the petitioners right to remain in the post comes to an end.

The petition thus lacks of any merit and I do not find any force in the same. It is accordingly dismissed.

(B.C. Kandpal, J.)

17.06.2005
ASWAL